IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1896 OF 1991

M/s. Bombay Chemicals Ltd., being a company incorported under the Companies Act 1956 and having its Registered Office at Manekji Wadia Building, 5th floor, 129 M.G. Road, Bell Lane, Bombay - 400 023.) ..Petitioners.

Versus

1. Tahasildar of Thane at Thane.)
2. The Asst. Collector, Thane Division, Thane.)
3. The Residential Dy.Collector & Ex. Officio Addl.Collector Thane Collectorate, Thane)
4. Addl.Commissioner, Konkan Bhavan Bombay)
5. State of Maharashtra) ..Respondents.

Mr. R. S. Apte with M.S.Lagu for the Petitioners.
Mr. A.H.Palekar, AGP for the Respondents 1 to 5.

CORAM : S. A. BOBDE, J.
DATED : 01st SEPTEMBER,2005.

ORAL JUDGMENT .:-

1. The petitioners have challenged the increase in the non-agricultural assessment in respect of land bearing city survey No. 275 (P), situate at village Kolshet in Thane, admeasuring about 44,877 sq.yards on the ground that the said non-agricultural assessment

has been enhanced during the period of Sanad which was for a period of 30 years.

2. The only ground on which the enhancement of the assessment is challenged is that it is not permissible to do so under section 113 (2B) of the Maharashtra Land Revenue Code which reads as follows :

> 113. Power of Collector to fix standard rate of non-agricultural assessment :-
>
> (1) ....
> (2) ....
> (2A) ....
> (2B) Where the standard rate of non-agricultural assessment is fixed or revised for any guaranteed period, the same shall be revised as soon as possible after the commencement of the next guaranteed period and such revised rate shall be deemed to have come into force with effect from the commencement of such next guaranteed period."

3. The land was converted to the non-agricultural use by the Additional Collector Thane vide order 13.05.1968. The non-agricultural assessment was fixed

at Rs.50/- per acre. This rate was guaranteed upto 31.07.1968. On 01.08.1968 a Sanad was executed.

Clause 1 of the Sanad provides that the non-agricultural assessment shall be fixed for a period of 30 years from 01.08.1968. The period of Sanad is 30 years. A demand notice dated 30.08.1986 was served on the petitioners, claiming Rs. 52949.20. It sought revision of the assessment from the year 1979. It appears that the demand is based on the revision of non-agricultural assessment from Rs. 463.60/- per annum to approximately Rs. 6412.95/- per annum.

4. The petitioners have challenged the demand before the Assistant Collector Thane Division, Thane, who dismissed the petitioners appeal on the ground that the Sanad stipulated the guaranteed period upto 30 years or whenever the rates are revised by the Collector. This interpretation is not born out on the reading of clause 1 of the Sanad. That clause reads as follows :-

(1) Assessment -- That the concerned applicant should pay in respect of the said land the assessment at the current rate of Rs. 463.60/- beginning

> from 1st August, 1968 till completion of a period of 30 years on 1st January of every year; and after completion of the said period of 30 years, the levy should be paid at the rate fixed by the concerned collector in accordance with the relevant law".

5. On a plain reading, therefore, the Assistant Collector misconstrued the said clause. The petitioners carried the matter in appeal. The Residential Deputy Collector, who heard the appeal also dismissed the appeal on the ground that while granting permission to non-agricultural use, the period that was guaranteed was only one year and that the assessment was liable to revision thereafter.

6. It is true that there was no such clause while granting permission for non-agricultural use. However, this has been superseded by the Sanad, which was granted on 24.09.1968 on certain terms and conditions, which includes the aforesaid clause 1. Thus on application of Section 113 (2B), it is clear that the petitioners are not liable to be charged any revised rate for a period of 30 years expiring in July, 1998. The demand which is in respect of the guaranteed period is, therefore, quashed and set

aside.

7. Rule is made absolute in the above terms.

8. In regard to the amount deposited by the petitioners with the respondents, the respondents shall adjust the said amounts by giving necessary credit towards future demands, as per appropriate calculations.

DT.01.09.05 (S.A.BOBDE,J)